

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

EIMCO CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 0672

Decision No. CU **941**

Counsel for claimant:

Freedman, Levy, Kroll &  
Simons

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by EIMCO CORPORATION in the amended amount of \$42,604.02 based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are

a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

An officer of the claimant, EIMCO CORPORATION, has certified that claimant's predecessor in interest to this claim, the Eimco Inter-America Corporation, a wholly owned subsidiary of claimant was incorporated in the State of Delaware on October 3, 1957; that all of the assets of Eimco Inter-America Corporation, including this claim, were purchased by claimant, after which Eimco Inter-America Corporation was dissolved on January 31, 1964; that claimant was organized under the laws of the State of Delaware in 1947; and that since September 28, 1960, 100% of its 1,465,750 outstanding shares of capital stock have been owned by the Ogden Corporation, a Delaware corporation.

An officer of the Ogden Corporation has certified that of the 10,004 stockholders of its 6,136,571 shares of outstanding capital stock, 9,915 stockholders, holding 6,102,254 shares, had addresses in the United States, and 89 stockholders, holding 34,317 shares (.00889%) had addresses in foreign countries and are assumed to be citizens of those countries.

The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copies of claimant invoices Nos. 4338 and 4156 of October 1, 1959 and November 6, 1959, respectively together with certain correspondence and a copy of an accounts receivable ledger reflecting the sale to Armando J. Valdez y Compania of Havana, Cuba of goods having a total balance due of \$30,160.04. Payment therefor was to be by 60-day sight draft. The record also contains a copy of a letter from the

First National City Bank of New York to claimant, dated March 22, 1960, in which it is reported that a draft in the amount of \$12,443.98, representing an indebtedness due claimant from Compania Azucarea Central Resulta, S. A., had been paid in local currency to a Cuban Collecting bank on December 30, 1959, and that the bank was awaiting a dollar reimbursement release from the Exchange Board, a Cuban Government agency. Claimant states that it has not received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on December 31, 1959 as to \$12,443.98 the date following payment to the local Cuban bank, and on January 30, 1961 as to \$30,160.04, the date payment was due.

The Commission has decided that in the certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the ~~date~~ of loss to the date of settlement (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

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Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that EIMCO CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-Two Thousand Six Hundred Four Dollars and Two Cents (\$42,604.02) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

**JAN 17 1968**

*Edward S. Re*

Edward S. Re, Chairman

*Theodore Jaffe*

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on FEB 20 1968

Theodore Jaffe, Commissioner

*Francis MacFarland*  
Clerk of the Commission

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

**NOTICE:** Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

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